

Application No. 09/697,316
Attorney Docket No. 110275.4300 US1
Reply to Office Action of June 15, 2005

REMARKS

I. Summary of the Office Action

Claims 1-53 were pending in the above-identified patent application.

In the Office Action of June 15, 2005, claims 1, 2, 6, 7, 9, 10, 15, 16, 20, 31, 32, 36, 44, 45, and 48-53 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Daniel, Jr. et al. U.S. Patent No. 4,972,504 (hereinafter "Daniel") in view of North et al. U.S. Patent No. 5,992,888 (hereinafter "North").

Claims 3, 17, 33, 43, and 46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Daniel in view of North and further in view of Anderson et al. U.S. Patent No. 5,974,396 (hereinafter "Anderson").

Claims 4, 18, 34, 35, and 47 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Daniel in view of North and further in view of Joshi U.S. Patent No. 5,317,566 (hereinafter "Joshi").

Claims 5, 8, and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Daniel in view of North and further in view of Jim Brown, "Software Links POS with Multiple Nets," Network World, October 17, 1988, pp. 33 and 35 (hereinafter "Brown").

Claims 11, 12, 21-26, and 37-42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Daniel in view of Dejaeger et al. U.S. Patent No. 6,456,981 (hereinafter "Dejaeger").

Claims 13, 14, and 27-30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Daniel.

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II. Summary of Applicant's Reply

Applicant has amended independent claims 1, 15, 31, and 44 in order to particularly point out and distinctly claim the subject matter which applicant regards as his invention. Applicant has also cancelled claims 4, 5, 8, 11, 12, 18, 19, 21, 22, 35, 37, 38, 47, and 48.

The Examiner's rejections of the claims are respectfully traversed.

Reconsideration of this application is respectfully requested.

III. The Rejection of the Claims under 35 U.S.C. § 103(a)

As set forth above, independent claims 1, 15, 31, and 44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Daniel in view of North. The Examiner's rejections are respectfully traversed.

As described in the specification, applicant's approaches are directed to at least the problem of "ascertaining en masse computer purchasing habits from data aggregated from a plurality of vending machines over, for example, a disparate geographic area" (See, e.g., Applicant's specification, page 7, lines 1-3). The present invention permits, inter alia, simultaneously collecting and/or providing the means to simultaneously collect (e.g., interfaces, gateways, etc.) data from a plurality of data generating machines (e.g., vending machines) having a plurality of data protocols. That is, the present invention provides a gateway and an interface system for receiving data from a plurality of data generating machines communicating over a plurality of data protocols.

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More particularly, the claimed invention accomplishes this by performing the following steps:

transmitting data pertaining to at least one monitored sales event associated with each of a plurality of data generating machines via at least one of a terrestrial, Internet, satellite, and landline network using at least one intelligent routing device, and selecting a least cost data transmission path over the at least one of said at least one terrestrial, Internet, satellite, and landline network;

performing a data transmission protocol conversion between at least one first network and at least one second network among said at least one of the terrestrial, Internet, satellite, and landline networks using at least one gateway device;

receiving the transmitted data at at least one computer;

storing cumulatively the data transmitted over a predetermined time period by each of the plurality of data generating machines;

analyzing the cumulatively stored data; and

transmitting to at least one of the plurality of data generating machines one or more audible and/or visual data that contain message content at least partially in response to the analyzed data including a consumer profile.

(Claim 15; independent claims 1, 31, and 44 include similar limitations).

The Examiner has rejected independent claims 1, 15, 31, and 44 as being unpatentable over Daniel in view of North. In particular, the Examiner contends that Daniels discloses a market research retail sales data collection system. Office Action, p.3. It should also be noted

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that each in-store device individually stores and transmits data to a central location. The Examiner correctly submits that applicant's independent claims have novelty over Daniel, recognizing that "Daniel discloses all of the limitations above but fails to disclose the product from manufacturing sources." Office Action, pp. 2-3. However, the Examiner asserts that North discloses this feature of applicant's independent claims, and that it would have been obvious to combine Daniel with North. Applicant respectfully disagrees, and submits that (1) the combination of Daniel with North fails to teach or suggest all the features of applicant's independent claims 1, 15, 31, and 44, and (2) the Examiner's proffered motivation to combine Daniel with North is insufficient.

**The Combination of Daniel with North Fails To Show or Suggest
All the Features of Applicant's Claims 1, 15, 31, and 44**

Applicant has amended independent claims 1, 15, 31, and 44 to include the feature of "at least one gateway . . . [that] performs a data transmission protocol conversion between at least one first network and at least one second network among said at least one of the terrestrial, Internet, satellite, and landline networks." The Examiner correctly submits that applicant's independent claims have novelty over Daniel and North, recognizing that "Daniel and North fail to teach at least one gateway device performing a data transmission protocol conversion between at least one first network and at least one second network among said at least one of the terrestrial, Internet, satellite, and landline networks that operatively communicate with each other." Office Action, p. 6. However, the Examiner asserts that Brown discloses this feature of applicant's independent claims, and that it would have been obvious to combine Daniel with North and Brown.

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Applicant respectfully disagrees, and submits that Brown does not show or suggest "performing a data transmission protocol conversion between at least one first network and at least one second network." Rather, Brown discloses that the StoreNet/2 software enables computers to communicate with in-store point of service (POS) controllers. "StoreNet/2 actually consists of a series of terminal control program modules that support the various data formats used by such POS terminal vendors as IBM and NCR Corp. These terminal control programs convert the various incoming data formats to the data format supported by the receiving device." Brown, p.33. However, nowhere in the Brown reference is it disclosed that the StoreNet/2 software performs a data transmission protocol conversion between at least one first network and at least one second network, wherein the networks are among at least one of terrestrial, Internet, satellite, and landline networks.

Applicant has also amended independent claims 1, 15, 31, and 44 to include the feature of "using at least one intelligent routing device that selects a least cost data transmission path over at least one of said at least one terrestrial, Internet, satellite, and landline network." The Examiner correctly submits that applicant's independent claims have novelty over Daniel and North, recognizing that "the combination of Daniel and North fail to disclose wherein at least one of said plurality of data generating machines has at least one intelligent routing device operatively connected thereto that selects a least a cost data transmission path over at least one of said at least one terrestrial, Internet, satellite, and landline network." Office Action, p. 5. Nevertheless, the Examiner asserts that Joshi discloses this feature of applicant's independent claims and that it would have been obvious to combine Daniel with North and Joshi.

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The Examiner contends that Joshi “discloses the concept of selecting a least cost to transmission of a network.” Office Action, p. 5. In particular, the Examiner cites col. 1, line 64 through col. 2, line 23 of Joshi. Applicant respectfully disagrees, and submits that while least cost routing in and of itself may be prior art, applicant is claiming the combination with the “system for aggregating and analyzing data from a plurality of data generating machines.”

**The Examiner's Proffered Motivation to Combine
Daniel with North Is Insufficient**

As provided above, the combination of Daniel and North fails to teach or suggest all the features of applicant's claims 1, 15, 31, and 44. Furthermore, even if the combination were sufficient, which it is not, applicant submits that the Examiner's proffered motivation to combine Daniel with North is insufficient.

In particular, the Examiner asserts that “it would have been obvious to a person of ordinary skill in the art to modify the teachings of Daniel to incorporate the teachings of North with the motivation to automatically display product information to a potential customer at a point of sale.” Office Action, p. 4. However, Daniel teaches a market research retail sales data collection system, where “[c]ach in-store device detects, interprets, processes and stores data on a real-time basis with respect to retail sales transactions occurring in the retail store . . . [and] each in-store device does not interfere with or require the active participation of the in-store Point-Of-Sale (POS) scanner/registers, POS controller or store computer controlling the normal operations of the retail store.” See, e.g., Daniel, Abstract. The retail sales transactions data is then used by, for example, market researchers. Thus, using the system of Daniel, the central site can only receive retail sales transactions data from each individual in-store device. This does not

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mean that the central site is capable of providing product information, and “audible and/or visual advertisements that contain message content at least partially in response to the analyzed data.” More importantly, North involves the insertion of advertising materials onto a transaction record card. Thus, one of ordinary skill in the art would not have been motivated to combine Daniel with North to “automatically display product information to a potential customer” as asserted by the Examiner. The Examiner has therefore failed to provide an adequate motivation to combine Daniel with North, and the rejection of claims 1, 15, 31, and 44 under section 103 should be withdrawn.

In addition, the Office Action, instead of providing objective evidence of a motivation to combine Daniel with North, Daniel with Dejaeger, and Daniel with North and one of Anderson, Brown, or Joshi, merely relies on various conclusions of obviousness that simply state the benefits of applicant's invention:

“Thus, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Daniel to incorporate the teachings of North with the motivation to automatically display product information to a potential customer at a point of sale.” Office Action, p. 4.

“It would have been obvious to a person of ordinary skill in the art to modify the disclosures of Daniel and North to incorporate the teachings of Anderson et al. with the motivation to the effectiveness of promotional efforts with respect to particular products.” Office Action, p. 5.

“It would have been obvious to a person of ordinary skill in the art to modify the disclosures of Daniel and North to incorporate the teachings of Brown in order to interface with point of sales and to receive data efficiently.” Office Action, pp. 5-6.

“It would have been obvious to a person of ordinary skill in the art to modify the teachings of Daniel to include an audible advertisements to the plurality of terminals as evidenced by Dejaeger et al. with the motivation to direct a customized advertising message at a given customer.” Office Action, p. 6.

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Such "[b]road conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence'" of a motivation to combine. In addition, relying solely on applicant's "disclosure as a blueprint for piecing together the prior art to defeat patentability" is insufficient as a matter of law. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999); see also *In re Lee*, 61 U.S.P.Q.2d 1430, 1433 (Fed. Cir. 2002) ("The factual inquiry of whether to combine references must be thorough and searching"); MPEP § 2143.

**III. The Rejection of Dependent Claims 2-14, 16-30, 32-43, and 45-53
under 35 U.S.C. § 103(a)**

The Examiner rejected each of dependent claims 2-14, 16-30, and 32-43 under 35 U.S.C. § 103(a) as being unpatentable over Daniel, Daniel in view of North, Daniel in view of Dejaeger, Daniel in view of North and in further view of Anderson, Brown, or Joshi. Applicant respectfully traverses the Examiner's rejection.

For example, dependent claims 41 and 42 include the features of transmitting one or more audio and/or visual advertisements "in accordance with a predetermined network transmission cost" and "at one or more times corresponding to a predetermined level of network traffic," respectively. For example, "advertising, as determined at least in part by analysis of the aggregated data, can be based on, for example, the location, time of day, and/or sales that have occurred during a previous predetermined time period (e.g., hour, day, week, month, etc.)." Applicant's specification, page 20, lines 15-19. In another example, "advertising information, as determined at least in part by analysis of the aggregated data, can be downloaded at predetermined times (e.g., low usage rates) or at times corresponding to a predetermined level of

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network traffic (c.g., low network traffic). Applicant's specification, page 20, lines 20-24. In yet another example, "advertising information, as determined at least in part by analysis of the aggregated data, can be downloaded to one or more vending machines within a predetermined time period (c.g., sometime in the next 72 hours) and be displayed or audibly played for a predetermined period of time (c.g., 24 hours)." Applicant's specification, page 21, lines 4-9.

The Examiner correctly submits that applicant's independent claims have novelty over Daniel, recognizing that "Daniel does not explicitly disclose wherein said at least one computer transmits to at least one of said plurality of data generating machines one or more audible and/or visual advertisements." Office Action, p. 6. However, the Examiner asserts that Dejaeger discloses this feature of applicant's independent claims, and that it would have been obvious to combine Daniel with Dejaeger. Applicant respectfully disagrees. Dejaeger relates to displaying a customized advertising message with a retail terminal. Customized advertising messages (see, c.g., FIG. 3 of Dejaeger) are delivered to a retail terminal based on a user profile associated with a user's previous use of the retail terminal. Nowhere in Dejaeger does it show or suggest transmitting audio and/or visual advertisements either "in accordance with a predetermined network transmission cost" or "at one or more times corresponding to a predetermined level of network traffic."

In addition, applicant respectfully submits that claims 2-14, 16-30, and 32-43, each of which depends from one of independent claims 1, 15, 31, and 44, are allowable for at least the same reasons that the independent claims are patentable as set forth above. Therefore, applicant respectfully requests that the Examiner withdraw the rejections of applicants' dependent claims.

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CONCLUSION

Applicant respectfully submits that, as described above, the cited prior art does not show or suggest the combination of features recited in the claims. Applicant does not concede that the cited prior art shows any of the elements recited in the claims. However, applicant has provided specific examples of elements in the claims that are clearly not present in the cited prior art.

In addition, each of the combination of limitations recited in the claims includes additional limitations not shown or suggested by the prior art. Therefore, for these reasons as well, applicants respectfully request withdrawal of the rejection.

Further, there is no motivation shown to combine the prior art cited by the Examiner, and even if these teachings of the prior art are combined, the combination of elements of claims, when each is interpreted as a whole, is not disclosed in the Examiner's proposed combination. As the combination of elements in each of the claims is not disclosed, applicants respectfully request that the Examiner withdraw the rejections.

Applicant strongly emphasizes that one reviewing the prosecution history should not interpret any of the examples applicants have described herein in connection with distinguishing over the prior art as limiting to those specific features in isolation. Rather, applicant asserts that it is the combination of elements recited in each of the claims, when each claim is interpreted as a whole, which is patentable. Applicant has emphasized certain features in the claims as clearly not present in the cited references, as discussed above. However, applicant does not concede that other features in the claims are found in the prior art. Rather, for the sake of simplicity, applicant is providing examples of why the claims described above are distinguishable over the cited prior art.

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Applicant wishes to clarify for the record, if necessary, that the claims have been amended to expedite prosecution. Moreover, applicant reserves the right to pursue the original subject matter recited in the present claims in a continuation application.

Any narrowing amendments made to the claims in the present Amendment are not to be construed as a surrender of any subject matter between the original claims and the present claims; rather merely applicants' best attempt at providing one or more definitions of what the applicants believe to be suitable patent protection. In addition, the present claims provide the intended scope of protection that applicants are seeking for this application. Therefore, no estoppel should be presumed, and applicant's claims are intended to include a scope of protection under the Doctrine of Equivalents.

Further, applicant hereby retracts any arguments and/or statements made during prosecution that were rejected by the Examiner during prosecution and/or that were unnecessary to obtain allowance, and only maintains the arguments that persuaded the Examiner with respect to the allowability of the patent claims, as one of ordinary skill would understand from a review of the prosecution history. That is, applicants specifically retract statements that one of ordinary skill would recognize from reading the file history were not necessary, not used and/or were rejected by the Examiner in allowing the patent application.

For all the reasons advanced above, applicant respectfully submits that the rejections have been overcome and should be withdrawn.

For all the reasons advanced above, applicant respectfully submits that the Application is in condition for allowance, and that such action is earnestly solicited.

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AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees, which may be required for this Amendment, or credit any overpayment to Deposit Account No. 08-0219.

In the event that an Extension of Time is required, or which may be required in addition to that requested in a petition for an Extension of Time, the Commissioner is requested to grant a petition for that Extension of Time which is required to make this response timely and is hereby authorized to charge any fee for such an Extension of Time or credit any overpayment for an Extension of Time to Deposit Account No. 08-0219.

Respectfully submitted,

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Date: December 13, 2005